

On June 14, 2006 appellant, then a 43-year-old recreation specialist, filed a traumatic injury claim alleging that on May 25, 2006 she experienced anxiety and stress after a counseling meeting with her supervisor. She did not stop work.

Appellant submitted a report from Dr. Vivian Acevedo, a family practitioner, dated May 25, 2006. Dr. Acevedo treated appellant for a migraine headache and chest pains and diagnosed migraine headache. She noted that appellant had a history of migraine headaches and indicated that her condition could be work related.

By letters dated June 15 and July 7, 2006, the Office asked appellant to submit additional factual and medical information, including a detailed description of the employment factors or incidents that she believed contributed to her claimed illness. In letters of the same date, the Office requested that the employing establishment submit a statement addressing appellant's allegations.

Appellant submitted an undated statement alleging that, on May 25, 2006, her supervisor improperly requested a counseling session with her to discuss her performance and attitude toward her coworkers. She alleged that her supervisor improperly advised her that she was excessively absent during the previous camp program and that regular attendance would be required at the next camp program. Appellant alleged that her supervisor improperly assigned her duties of an assistant instead of duties coinciding with her position as a director of youth programs. She submitted a report from Dr. Jennifer E. Nieves Santos, a family practitioner, dated May 30, 2006. Dr. Santos treated appellant for anxiety and chest pain and diagnosed a nervous breakdown. In a July 18, 2006 attending physician's report, Dr. Acevedo noted that appellant reported working under a lot of stress since May 25, 2006. She diagnosed major depressive disorder and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. Dr. Acevedo indicated that appellant was totally disabled. In a prescription note of the same date, she noted that appellant was evaluated and remained emotionally affected and could not work.

The employing establishment submitted a memorandum from Irma Julia, chief of child and youth services, dated August 9, 2006. Ms. Julia noted that appellant served as a recreation specialist for several years and was responsible for coordinating and planning youth programs. She indicated that appellant was called in for a counseling session to discuss issues pertaining to her relations and communications with coworkers. Appellant was informed that due to unforeseen events the summer camp program would be changed. She indicated that school facilities, were unavailable and the program would have to be held in the current facilities which would entail changes to the youth group size, planning and employee scheduling. Ms. Julia stated that, as a manager, she was responsible for counseling employees on issues that may interfere with their performance and the mission of the program. She noted that her decision to counsel appellant was based on the circumstances and the best interest of the program.

In an August 22, 2006 decision, the Office denied appellant's claim finding that the claimed emotional condition did not occur in the performance of duty.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical

opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,² the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.³ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act.⁴ When an employee experiences emotional stress in carrying out her employment duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.⁵ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act. Where the disability results from an employee's emotional reaction to her regular or specially-assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁶

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁷ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁸

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁵ *Lillian Cutler*, *supra* note 2.

⁶ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 2.

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

ANALYSIS

Appellant did not attribute her anxiety or stress to any of her regular duties as a recreation specialist.

Appellant's allegations regarding her performance evaluation, absenteeism and work assignments relate to administrative or personnel actions. In *Thomas D. McEuen*,⁹ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰

Appellant alleged that on May 25, 2006, her supervisor improperly requested a counseling session with her to discuss her performance and attitude toward her coworkers. This relates to administrative or personnel matters, not to the employee's regular or specially-assigned work duties and does not fall within the coverage of the Act.¹¹ Although the handling of disciplinary actions and evaluations are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹² As noted, an administrative or personnel matter will not be considered to be an employment factor unless the evidence discloses error or abuse on the part of the employing establishment or that it acted unreasonably. The evidence is insufficient to establish that the employing establishment erred or acted abusively in this matter. Ms. Julia, chief of child and youth services, submitted a memorandum dated August 9, 2006 stating that appellant was called in for a counseling session to discuss issues pertaining to her relations and communications with coworkers. She advised that as a manager she was responsible for counseling employees on issues that may interfere with their performance and the mission of the program. Ms. Julia's decision to counsel appellant was based on the circumstances and the best interests of the program. Although appellant alleged stress and anxiety after meeting with her supervisor she has not provided evidence to substantiate that any actions taken by Ms. Julia were in error, abusive or unreasonable in nature. She has not established a compensable factor pertaining to the issuance of disciplinary actions and evaluation.

⁹ See *Thomas D. McEuen*, *supra* note 6; *Lillian Cutler*, *supra* note 2.

¹⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹¹ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹² *Id.*

Appellant alleged that Ms. Julia improperly advised her that she was excessively absent during the previous camp program and that she was required to regularly attend the next camp program. The Board notes that the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹³ The Board finds that the employing establishment acted reasonably in this administrative matter. Ms. Julia indicated, as noted above, that as a manager she was responsible for counseling employees on issues that may interfere with their performance and the mission of the program and in this instance her decision to counsel appellant was based on the circumstances and the best interest of the program. Appellant has presented no evidence to establish error or abuse in the counseling session or the matters discussed. Her complaints focus primarily on the manner in which her supervisor exercised her supervisory discretion. The Board has held that mere dislike or disagreement with a supervisory action will not be compensable absent evidence of error or abuse. Appellant has not established administrative error or abuse by her supervisor and therefore they are not compensable under the Act.

Appellant also alleged that Ms. Julia improperly assigned her duties of an assistant instead of duties coinciding with her position as a director of youth programs.¹⁴ The Board finds that appellant has not offered sufficient evidence to establish error or abuse regarding her work assignments. The evidence does not establish that the employing establishment acted unreasonably. Ms. Julia indicated that appellant was informed that due to unforeseen events changes would have to be made to the summer camp program. She indicated that school facilities were unavailable and the program would have to be held in the current facilities which would entail changes to the youth group size, planning and employee scheduling. Ms. Julia indicated that she was acting in the best interest of the program. The Board has also held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially-assigned work duties, but rather constitute appellant's desire to work in a different position.¹⁵ The employing establishment has either denied appellant's allegations or explained the reasons for its actions in these administrative matters. Appellant has presented no evidence to support that her supervisor acted unreasonably. She has not established a compensable factor of employment in this regard.¹⁶

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

¹³ See *Judy Kahn*, 53 ECAB 321 (2002).

¹⁴ *Donney T. Drennon-Gala*, 56 ECAB ____ (Docket No. 04-2190, issued April 26, 2005).

¹⁵ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

¹⁶ As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board